

time after notice to the agency. The agreement must:

(A) Provide that the specified period of time will not commence until the lienholder gives written notice of the borrower's default and the prior lienholder's intention to accelerate the indebtedness to the agency office servicing the loan,

(B) Include the address of the agency servicing office,

(C) Give the agency the option to cure any monetary default by paying the amount of the borrower's delinquent payments to the prior lienholder, or pay the obligation in full and have the lien assigned to the agency, and

(D) Provide that the prior lienholder will not declare the lien in default for any nonmonetary reason if the agency commences liquidation proceedings against the property and thereafter acquires the property.

(ii) When the prior lien secures future advances, including the lienholder's costs for borrower liquidation or bankruptcy, which under State law have priority over the mortgage being taken (or an agency mortgage already held), the prior lienholder shall agree not to make advances for purposes other than taxes, insurance or payments on other prior liens without written consent of the agency.

(iii) The prior lienholder shall consent to the agency making (or transferring) the loan and taking (or retaining) the related mortgage if the prior lien instrument prohibits a loan or mortgage (or transfer) without the prior lienholder's consent.

(iv) The prior lienholder shall consent to the agency transferring the property subject to the prior lien after the agency has obtained title to the property either by foreclosure or voluntary conveyance if the prior lien instrument prohibits such transfer without the prior lienholder's consent.

(2)-(3) [Reserved]

(4) *Agreement by holder of seller's interest under land purchase contract.* If the buyer's interest in the security property is that of a buyer under a land purchase contract, it will be necessary for the seller to execute, in recordable form, an agreement containing all of the following provisions:

(i) The seller shall agree not to sell or voluntarily transfer the seller's interest under the land purchase contract without the prior written consent of the State Office.

(ii) The seller shall agree not to encumber or cause any liens to be levied against the property.

(iii) The seller shall agree not to commence or take any action to accelerate, forfeit, or foreclose the buyer's interest in the security property until a specified period of time after notifying the State Office of intent to do so. This period of time will be 90 days unless a State Supplement provides otherwise. The agreement shall give the agency the option to cure any monetary default by paying the amount of the buyer's delinquent payments to the seller, or paying the seller in full and having the contract assigned to the agency.

(iv) The seller shall consent to the agency making the loan and taking a security interest in the borrower's interest under the land purchase contract as security for the agency loan.

(v) The seller shall agree not to take any actions to foreclose or forfeit the interest of the buyer under the land purchase contract because the agency has acquired the buyer's interest under the land purchase contract by foreclosure or voluntary conveyance, or because the agency has subsequently sold or assigned the buyer's interest to a third party who will assume the buyer's obligations under the land purchase contract.

(vi) When the agency acquires a buyer's interest under a land purchase contract by foreclosure or deed in lieu of foreclosure, the agency will not be deemed to have assumed any of the buyer's obligations under the contract, provided that the failure of the agency to perform any such obligations while it holds the buyer's interest is a ground to commence an action to terminate the land purchase contract.

(5)-(6) [Reserved]

(e) [Reserved]

§ 1927.58 Closing the transaction.

The closing agent will cooperate with the approval official, borrower, seller, and other necessary parties to arrange the time and place of closing. The

transaction may be closed when the agency determines that the agency requirements for the loan have been satisfied and the closing agent or approved attorney can issue or cause to be issued a policy of title insurance or final title opinion as of the date of closing showing title vested as required by the agency, the lien of the agency's mortgage in the priority required by the agency, and title to the mortgaged property subject only to those exceptions approved in writing by the agency. The loan will be considered closed when the mortgage is filed for record and the required lien is obtained.

(a) *Disbursement of loan funds.* When the closing agent indicates that the conditions necessary to close the loan have been met, loan funds will be forwarded to the closing agent. Loan funds will not be disbursed prior to filing of the mortgage for record; however, when necessary, loan funds may be placed in escrow before the mortgage is filed for record and disbursed after it is filed. No development funds will be kept in escrow by the closing agent after loan closing, unless approved by the agency. Loan funds for the payment of a lien may be disbursed only upon the recording of a discharge, satisfaction, or release of prior lien interests (or assignment where necessary to protect the interests of the agency).

(b) *Title examination and liens or claims against borrowers.* If there are exceptions or recorded items which have arisen since the preliminary title opinion, the transaction will not be closed until these entries have been cleared of record or approved by the agency. The closing agent will advise the approval official of the nature of such intervening instruments and the effect they may have on obtaining a valid mortgage of the priority required or the title insurance policy to be issued.

(c) *Taxes and assessments.* The closing agent will determine if all taxes and assessments against the property which are due and payable are paid at or before the time of loan closing. If the seller and the borrower have agreed to prorate any taxes or assessments which are not yet due and payable for the year in which the closing of the transaction takes place, the seller's proportionate share of the taxes and

assessments will be deducted from the proceeds to be paid to seller at closing and will be added to the amount required to be paid by borrower at closing. Appropriate prorations as agreed upon between the borrower and seller may also be made for taxes paid by the seller which are applicable to a period after the closing date, and for common area maintenance fees, prepaid rentals, insurance (unless the borrower is to obtain a new policy of insurance), and growing crops.

(d) *Affidavit regarding work of improvement.*—(1) *Execution by borrower.* If required by State Supplement, the closing agent will require that an affidavit regarding work of improvement, provided by the agency, be completed and executed when a loan is being made to a borrower who already owns the real estate to be mortgaged. This affidavit will be executed by the borrower at closing.

(2) *Execution by seller.* If required by State Supplement, the closing agent will require that an affidavit regarding work of improvement, provided by the agency, be completed and executed (including acknowledgment) by the seller when the agency is making a loan to a borrower to enable the borrower to acquire the property (including transfers). This affidavit will be executed by the seller at closing.

(3) *Legal insufficiency of affidavit form.* If the agency affidavit regarding work of improvement is not legally sufficient in a particular State, a State form approved by OGC will be used. A similar form that may be required by a title insurance company may be substituted for the agency form.

(4) *Recording.* The affidavit will not be recorded unless the closing agent deems it necessary and State law permits.

(5) *Delay in closing.* The loan will not be closed if, at the loan closing, the seller (in a sale transaction) or the borrower (in a nonpurchase money loan situation) indicates that construction, repair, or remodeling has been commenced or completed on the property, or related materials or services have been delivered to or performed on the property within the time limit specified in the affidavit, unless a State Supplement provides otherwise. The

closing agent will notify the approval official, who will determine if the work of improvement could result in a lien prior to the agency lien. The State Office will, with the advice and concurrence of OGC, provide in a State Supplement the period of time to be used in completing the affidavit.

(e)–(f) [Reserved]

(g) *Return of loan documents to approval official after loan closing.* Within 1 day after loan closing, the closing agent will return completed and executed copies of the loan closing instructions, the executed original promissory note, and all other documents required for loan closing (except the mortgage), to the approval official. If the recorded mortgage is customarily returned to the borrower or closing agent after recording, then it must be forwarded to the approval official immediately.

(h) *Final title opinion or title insurance policy.* As soon as possible after the transaction has been closed.

(1) *Final title opinion.* The attorney will issue a final title opinion to the agency and the borrower on a form provided by the agency. Issuance of the final title opinion should not be held up pending the return of recorded instruments. If it is not possible for the final title opinion to show the book and page of recording of the agency security instrument, the words “and is recorded” in the final title opinion form provided by the agency office, may be deleted and the blank space completed to show the filing office and the filing instrument number, if available. Attached to the final title opinion will be required documents then available, including any which the approval official has furnished to the attorney which were not previously returned. The attorney will ensure that all recorded instruments are forwarded or delivered to the proper parties after recording. The certification of title will be forwarded for a voluntary conveyance.

(2) *Title insurance policy.* The closing agent will send or deliver the title insurance policy, with the United States listed as mortgage holder, to the approval official. The policy will be subject only to standard exceptions and those outstanding encumbrances, and

exceptions, approved by the approval official. If an owner's policy of title insurance is requested, the closing agent will send or deliver it to the borrower. The closing agent will ensure that all recorded instruments are delivered or sent to the proper parties after recording.

(3) [Reserved]

(i) *Other services of the closing agent.*

(1) The closing agent will assist the approval official in preparing, completing, obtaining execution and acknowledgment, and recording the required documents when necessary. The closing agent will keep the approval official advised as to the progress of title clearance and preparation of material for closing the transaction.

(2) The closing agent will provide services for deeds in lieu of foreclosure as set forth in §1927.62 of this subpart, and §1955.10 of subpart A of part 1955 of this chapter.

§ 1927.59 Subsequent loans and transfers with assumptions.

Title services and closing for subsequent loans to an existing borrower will be done in accordance with previous instructions in this subpart, except that:

(a) *Loans closed using title insurance or title opinions.* (1) Title insurance or title opinions will be obtained unless:

(i) The cost of title services is excessive in relationship to the size of the loan,

(ii) The agency currently has a first mortgage security interest,

(iii) The applicant has sufficient income to service the additional loan,

(iv) The borrower is current on the existing agency loan, and

(v) The best mortgage obtainable adequately protects the agency security interests.

(2) Title insurance or a final title opinion will not be obtained for a subsequent Section 504 loan where the previous Section 504 loan was unsecured or secured for less than \$7,500 and the outstanding debt amount plus the new loan is less than \$7,500.

(3) Loans closed using a new lender title insurance policy:

(i) Will cover the entire real property which is to secure the loan, including the real property already owned and